

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

)
) MDL # 1456
)
)

) Master File No. 1:01-CV-12257-PBS
) Sub-Category Case No. 1:08-CV-11200
)

THIS DOCUMENT RELATES TO
*United States ex rel. Linnette Sun and Greg
Hamilton, Relators*
v.
Baxter Healthcare Corporation

) Judge Patti B. Saris
)
)
)
)
)
)

**LOCAL RULE 56.1 STATEMENT OF MATERIAL FACTS SUPPORTING
RELATORS' MEMORANDUM IN OPPOSITION OF BAXTER HEALTHCARE
CORPORATION'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Rule 56, Fed. R. Civ. P. and Local Rule 56.1 Relators submit this statement of material facts in opposition to Baxter's Motion for Partial Summary Judgment.

**I. THE UNITED STATES DID NOT RELEASE, AND NEVER INTENDED TO
RELEASE CLAIMS FOR ADVATE, WHICH ARE NOWHERE IN VEN-A-
CARE'S COMPLAINT.**

1. The United States has filed a Statement indicating that it consented to Ven-A-Care's dismissal with prejudice "only of claims pled in relator Ven-A-Care's complaint."

[Document 7897, Case No. 1:01-cv-12257-PBS, Nov. 14, 2011.]

2. The Ven-A-Care complaint makes no mention whatsoever of Advate. [Document 1, Case No. 1:10-cv-11186,-PBS, May 28, 2010.]

3. This Court has determined that Relator Sun is the original source of information regarding Advate pricing fraud by Baxter. [Case No. 1:01-cv-12257-PBS, Doc. 7008 at 5 (Order of March 25, 2010).]

4. Baxter has admitted in its pleadings in this matter that Linnette Sun is the first-filed relator regarding allegations concerning Advate pricing fraud by Baxter. [Case No. 1:01-cv-12257-PBS, Doc. 7831-1 at 1 (July 29, 2011).]

II. THE STATE MEDICAID DIRECTORS HAD NO IDEA THAT BAXTER WAS IMPOSING A MEGA-SPREAD OF NEARLY TWO TIMES THE ACTUAL COST OF ADVATE AND RECOMBINATE.

3. The spread on Advate is, and has been approximately 192% of its acquisition cost. [Declaration of Greg Hamilton, ¶ 4.]

4. The spread on Recombinate is, and since 2001 has been approximately 186% of its acquisition cost. [Declaration of Greg Hamilton, ¶ 5.]

5. To the extent that cross-subsidization is an issue, it is expected that the cost of storing and administering Advate and Recombinate would require a margin of no more than 25% of the drug's actual cost. (*In Re Pharmaceutical Industry Average Wholesale Price Litigation*; Trials of Class 2 and Class 3 Claims, 491 F.Supp. 2d 20, 37-38 (D. Mass. 2007).)

6. Relators refer to and incorporate the Declaration of Mark Kleiman Pursuant to Rule 56(f) of the Federal Rules of Civil Procedure.

Dated: November 14, 2011

/s/ Mark Allen Kleiman

Mark Allen Kleiman
2907 Stanford Avenue
Venice, California 90292
Telephone: (310) 306-8094

Counsel for Relators Linnette Sun and
Greg Hamilton

CERTIFICATION OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **LOCAL RULE 56.1 STATEMENT OF MATERIAL FACTS SUPPORTING RELATORS' MEMORANDUM IN OPPOSITION OF BAXTER HEALTHCARE CORPORATION'S MOTION FOR PARTIAL SUMMARY JUDGMENT** to be served on all counsel of record via electronic service by sending a copy to LexisNexis File & Serve for posting and notification to all parties on November 14, 2011.

/s/ Mark Allen Kleiman
MARK ALLEN KLEIMAN